

## Exhibit C

IN THE CHANCERY COURT FOR  
RUTHERFORD COUNTY, TENNESSEE  
AT MURFREESBORO

KEVIN FISHER, ET AL.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 12-CV-853
	)	
RUTHERFORD COUNTY REGIONAL	)	
PLANNING COMMISSION, ET AL.,	)	
	)	
Defendants.	)	

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TRANSCRIPT OF PROCEEDINGS  
Wednesday, June 13, 2012

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APPEARANCES:

For the Plaintiffs: Mr. Joe M. Brandon, Jr.  
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Mr. J. Thomas Smith  
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For the Defendants: Mr. Josh McCreary  
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Reported By:  
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1 (The aforementioned cause came on to be  
2 heard Wednesday, June 13, 2012, before the Honorable  
3 Robert E. Corlew, Chancellor, beginning at  
4 approximately 10:24 a.m., when the following  
5 proceedings were had, to-wit:)

7 THE COURT: Counsel, good morning.  
8 The matter before us today, then, is Chancery Docket  
9 No. 12-CV-853. The parties are Kevin Fisher and others  
10 versus Rutherford County Regional Planning Commission  
11 and others.

12 Counsel, initially, I had inquired of  
13 counsel informally -- and, for the record, it's 10:25.  
14 We have a number of matters, of course, that are set on  
15 our morning docket this morning. We dealt with some  
16 other issues. I asked counsel informally, because this  
17 is a new case, a new matter, just to be certain that  
18 all counsel were satisfied to continue the same  
19 agreements that you had entered in the prior case  
20 regarding the issues of media and their presence in the  
21 courtroom.

22 We're all aware of the fact that the  
23 Supreme Court rule provides some restrictions on media,  
24 unless there's agreement of the parties. And  
25 previously the parties agreed those restrictions should

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1 not be placed.

2 Is that the continued agreement, then,  
3 in this cause, Mr. Brandon and Mr. Smith?

4 MR. BRANDON: Yes, sir.

5 MR. SMITH: Yes, sir.

6 THE COURT: Mr. McCreary?

7 MR. MCCREARY: It is.

8 THE COURT: Very well. Are there  
9 further preliminary issues for either side? Are we  
10 here today strictly on arguments of counsel?

11 MR. BRANDON: Yes, sir.

12 THE COURT: Very well. Mr. Brandon,  
13 we're happy to hear you.

14 MR. BRANDON: I suppose you really  
15 didn't think that that was going to be the last time we  
16 were here, back in May. So here we are again today.  
17 And as the Court pointed out, we're here on a different  
18 case number, although, we incorporated a lot of the  
19 pleadings from Case No. 10-CV-1443.

20 Chancellor, you issued a memorandum  
21 opinion on May 29th, 2012. As a result, the plaintiff  
22 submitted an order, the defense submitted an order, and  
23 the Court went ahead and drafted its own order that was  
24 entered on June the 1st, 2012. Specifically, in the  
25 Court's order, you held the decision of the Planning

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1 Commission of May 24, 2010, approving the site plan for  
2 the ICM is hereby declared to be void ab initio, that  
3 the decision having been made at a meeting which was  
4 held in the violation of the Tennessee Open Meetings  
5 Act.

6 In any other case, and I truly mean  
7 any other case, that would have been the end of it. No  
8 one would have had to come back up here, because the  
9 Government would have enforced the decision of the  
10 Court. But in this particular case, we are back up  
11 here.

12 Now, the Court noted in Footnote 3 at  
13 the bottom of page 3 of its order, that an injunction  
14 is no longer within the scope. If you look at what we  
15 asked for an injunction for, it was an injunction or  
16 prohibition against the advocacy of Shariah law in  
17 Rutherford County. The Court dismissed those actions  
18 on due process grounds based upon the plaintiffs not  
19 showing -- or what the Court found, that they did not  
20 show there was particularized injury. The Government  
21 argues we've already come in on that particular issue.  
22 That's what I would say to that one.

23 Second, the -- in your footnote, you  
24 said the County can again reconsider this action,  
25 basically, vote on it again. I think either in your

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1 memorandum opinion or in your order, you said, of  
2 course, there's not going to be a public hearing there.  
3 It's just vote on it. But that was there.

4 And, third, the Court said the  
5 plaintiffs may seek an order to stop through a writ of  
6 mandamus. Well, we attempted --

7 THE COURT: I think we said mandamus  
8 or such other actions that were appropriate.

9 MR. BRANDON: Yes, sir.

10 THE COURT: We didn't restrict you one  
11 way or the other.

12 MR. BRANDON: That's correct.

13 We waited. We tried to allow the  
14 Government to do what's right, to follow the law. The  
15 Government has made it clear, through what they have  
16 spoken publicly, that they intend to do nothing  
17 regarding that.

18 As late as yesterday, apparently,  
19 there was another meeting held, and now they're saying  
20 they're going to appeal. We already -- they have that  
21 right. I'm glad we live in America where we have  
22 rights to question things.

23 But we went ahead and filed our writ  
24 of mandamus, and that's what we're here for today. The  
25 truth of the matter is the Government has continued to

2 (Pages 2 to 5)

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1 allow the ICM to build.

2 Now, Rutherford County Zoning  
3 Resolution 503 -- we reference this in our petition for  
4 writ of mandamus -- provides all development shall be  
5 required to file a site plan and shall not be entitled  
6 to a zoning certificate until and unless the site plan  
7 has been approved by the appropriate agency. Site plan  
8 review and approval by the Planning Commission shall be  
9 required for the following, and it has an A, B, C, D.

10 Under D, it provide all churches and  
11 other religious structures in excess of 3,000 square  
12 feet, clearly, there is a requirement for a valid site  
13 plan. The Government does not have a valid site plan.

14 Now, parenthetically, they want to  
15 argue, Hey, we did this like every other one. But that  
16 wasn't the proof put forth at trial. On all their  
17 others, thousands of other site plans reviews, they  
18 have noticed the date, the time, and the location.  
19 They had it on their website. This case was handled  
20 entirely different from day one, and the Court so  
21 found.

22 Also, under Section 22 of the County  
23 Zoning Resolutions, under Article 22, Section 22, it  
24 provides any person, firm, or corporation violating any  
25 of the provisions of this resolution shall be deemed

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1 guilty of a misdemeanor, and upon conviction thereof  
2 fined not more than \$50. Each day's continuance of a  
3 violation shall be considered as a separate offense.  
4 And, quite frankly, that's where we are at the present  
5 time.

6 Further, we referenced a TCA Section  
7 13-7-111, which basically tracks that particular  
8 government resolution. The plaintiffs have attached  
9 affidavits to their petition for writ of mandamus,  
10 according to the law, to show building is continuing.

11 The defendants are intentionally refusing to do  
12 anything to stop construction, although it's within  
13 their power. That's referenced in the affidavits.

14 This is nothing more than selective  
15 enforcement of the law, and that's unacceptable. There  
16 again, if this was any other entity, anybody else,  
17 there -- this issue wouldn't be here today. The  
18 Government would have issued a stop-work order. They  
19 would have said, Go back through the process, if they  
20 thought they could get passed a second time around, and  
21 that's what would be going on. There wouldn't be  
22 continued thumbing the nose to this particular Court in  
23 words and in actions.

24 This case has been handled in a  
25 clandestine manner since day one, from the Mayor and

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1 the Planning Director engaging in secret meetings with  
2 the ICM -- that's just the truth. That's what the  
3 evidence showed in this particular case.

4 And if they thought they didn't have  
5 to have a valid site plan, then they would have known  
6 that after these secret meetings with our government  
7 officials. The highest of our officials had meetings  
8 and said, This is what you've got to do to get it  
9 approved. Now the Court has declared that to be void.

10 The Government argues that they have  
11 30 days to ignore this Court's order because the order  
12 is not final. Plaintiffs are not seeking an  
13 enforcement of the court order, although we submit  
14 we're entitled to that. We, rather, are seeking a  
15 mandamus action for ministerial duties to be performed.

16 And, specifically, this Court said,  
17 This Court retains continuing jurisdiction over the  
18 parties and the subject matter of this lawsuit for a  
19 period of one year and further regarding the site plan  
20 for the Islamic Center of Murfreesboro.

21 The defendants also allege that, Look  
22 if we do anything, we're going to violate RLUIPA and  
23 RFRA. Well, earlier on in this case you held that  
24 RLUIPA and RFRA did not apply to this particular case.

25 What the Government is really saying

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1 is that the ICM should be entitled to preferential  
2 status, requiring less notice than that required for  
3 ordinary tax-paying citizens. That's simply not the  
4 law. I agree that the law says you cannot impose a  
5 burden, but it doesn't say you make the door wider than  
6 you make it for any other tax-paying citizen.

7 And, quite candidly, under this RLUIPA  
8 and RFRA claim that the Government's advancing, this  
9 opens the door for the plaintiffs to be able to show  
10 special injury, which goes back to the Shariah risk  
11 that the Court file is inundated with and sworn to. We  
12 submitted depositions. We submitted live testimony  
13 from Secretary of Defense Gaffney, from FBI Guandola,  
14 from Stephen Coughlin. It's all through the Court  
15 file.

16 If the Government is going to continue  
17 to refuse to honor the orders of this Court, to  
18 continue to refuse to perform their ministerial  
19 actions, which are required under the law, it's not  
20 going to be res judicata, it's going to come in under  
21 showing special injury as a result of their refusal to  
22 follow the law.

23 The Government, in their brief, talks  
24 about a mandamus under Section 3. And they're correct  
25 about what they say about the law, that there's three

3 (Pages 6 to 9)

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1 things -- three parts of it, that the plaintiff has a  
2 clear right to the relief sought. We do. There's  
3 zoning resolutions. The Court can take judicial notice  
4 of that. The Court's heard all of this proof in this  
5 case.

6 Two, that the defendant has a plainly  
7 defined and preemptory duty to do the acts in question.  
8 That's provided in the zoning resolution. It's their  
9 requirement to enforce the zoning regulations.

10 And, three, that's no other remedy. I  
11 mean, the other remedy is for some third party to take  
12 some action and engage in civil disobedience. No.  
13 That would be inappropriate and improper. That's the  
14 reason we're back up here is to continue to follow the  
15 law as we have since day one.

16 We may not have agreed with all the  
17 rulings, and the Court may not have agreed with  
18 everything we've tried to put on. We've continued to  
19 try to come in this courtroom and put on our case in a  
20 succinct manner. Now we're asking this Court to force  
21 the Government to do what they're supposed to do.

22 Under the order of this Court, site  
23 plan review is void; therefore, building permit is  
24 void; therefore, they cannot issue any type of an  
25 occupancy permit. There again, you're retaining

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1 jurisdiction over this case. That would appear to be  
2 the next phase, a request for an occupancy request.  
3 We're seeking enforcement of their duties under the  
4 zoning resolution. Again, I say that, not under the  
5 order of this Court.

6 If the Court finds that the actions of  
7 the Government are not ministerial, then an injunction  
8 would be appropriate. Under Rule 65.01, injunction may  
9 redirect or direct or mandatorily direct the doing of a  
10 particular act.

11 There again, if the Court finds it's  
12 not ministerial, we would submit -- and we asked for  
13 this in our petition -- for an injunction. It's  
14 broader than a mandamus.

15 And, basically, just to kind of paint  
16 the picture, the Government's saying, We've been  
17 through two years of litigation, now we're going to  
18 appeal, but we're not going to do anything to enforce  
19 this.

20 What is the Tennessee Open Meetings  
21 Law about? What are the consequences of it? If you  
22 say, No, we can continue to allow people to build. We  
23 understand they violated the law. We disagree with  
24 that, but you can give us no consequences. We're above  
25 the law. Which raises the issue again, are government

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1 officials -- do they become intoxicated with power or  
2 are they arrogant to begin with? I'm not sure I  
3 understand the answer to that.

4 The bottom line is the legislature has  
5 given us laws, we all have to follow it, and the  
6 Government needs to follow it at this point.

7 Thank you.

8 THE COURT: Thank you.

9 Mr. McCreary?

10 MR. MCCREARY: Good morning, Your  
11 Honor.

12 Let me say at the outset, of course,  
13 the defendants are not snubbing their nose at the  
14 Court's order and certainly will comply with whatever  
15 this Court orders. However, there are a number of  
16 issues and problems with the relief that's being  
17 requested at this stage and in the manner it's being  
18 requested. Certainly, that's an issue the Court needs  
19 to address and the defendants are entitled to bring to  
20 the Court's attention.

21 The plaintiff suggests multiple times  
22 this action now is not -- doesn't have anything to do  
23 with the Court's previous order. Of course it does.  
24 Everything that is being requested here is predicated  
25 on the Court's order that was entered June 1, 2012.

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1 That is to say if the -- if it's not  
2 predicated on the Court's order, then the site plan in  
3 question is not in question. If the site plan in  
4 question is not in question, then, of course, there  
5 wouldn't be reason to stop construction.

6 As to the legal issues, specifically,  
7 Your Honor, the order entered on June 1 is simply not  
8 an order capable of enforcement at this stage. That's  
9 not to say it won't become an order capable of  
10 enforcement. The action being requested is simply  
11 premature.

12 Our view is that Tennessee Rule of  
13 Civil Procedure 62.01 and the associated case law  
14 clearly says that until the expiration of 30 days, that  
15 no party can enforce the order, meaning the defendants  
16 can't enforce it, the plaintiffs can't enforce it.  
17 It's just sort of in abeyance until the expiration of  
18 that time period.

19 The reason for that rule, I think, is  
20 clear and practical. That is, both parties have an  
21 opportunity during that time period, as the Court well  
22 knows, to consider any sort of appropriate post-trial  
23 motions, to consider appeal, and so forth. And until  
24 those types of efforts can be discussed with the  
25 parties themselves, and the clients, and appropriate

4 (Pages 10 to 13)

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1 actions taken, the order really just, for all practical  
2 purposes, sits there.

3 So to come into this Court now under a  
4 separate case with a separate case number in an effort  
5 to really enforce that order is simply not proper at  
6 this stage. It goes beyond that. With all due respect  
7 to the Court, it's really an issue of jurisdiction.  
8 Because the case law spells out that in order for the  
9 Court to have jurisdiction, you have to have a  
10 justiciable issue, and it has to be right.

11 Our posture at this point and  
12 suggestion to the Court is that until that order is  
13 final and the 30 days has expired, there's not a  
14 justiciable issue here and the matter's not ripe. That  
15 precludes the Court's jurisdiction at this point in  
16 time.

17 We do contend that actions taken at  
18 this point very well may violate the various Religious  
19 Freedom Restoration Acts that have been alleged  
20 throughout. We have maintained that from the outset of  
21 the other case, and we maintain that that is the case  
22 under the present lawsuit as well. I don't believe,  
23 contrary to what counsel stated, that the Court ever  
24 concluded that those acts do not apply or have  
25 implications in this case. Certainly, we've been up

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1 here a number of times, and the Court's made lots of  
2 comments. I don't recall a holding or an order to that  
3 effect.

4 And if -- the issue is simple. Our  
5 position is that if the County is required to take  
6 action against this particular applicant, who is --  
7 that is there for religious use -- it is a mosque --  
8 that is distinct or different from actions taken  
9 against other religious uses, then there is at least  
10 the potential for violation of those federal and state  
11 laws.

12 The Court well knows at this point  
13 that those statutes do not allow the County to treat  
14 one religious organization differently than another,  
15 and, frankly, to treat religious organizations  
16 differently than nonreligious organizations. And so to  
17 simply go out of turn here and pull a building permit  
18 or issue a stop-work order would just fly in the face  
19 of those requirements, at this stage anyway.

20 We also contend that this case -- and  
21 probably this would be an appropriate subject of a  
22 motion to dismiss at the right time. But this case  
23 really is res judicata as a result of the first case.

24 As the Court knows, a res judicata  
25 defense requires multiple elements. But if it is the

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1 same parties or their privies, and it's the same case,  
2 or it could have been litigated in the previous case,  
3 then the res judicata defense applies here.

4 Our position is that all of those  
5 elements are met. These are the exact same parties,  
6 with the only difference being the inclusion of David  
7 Jones, who is the building codes director. But the  
8 case law is clear it's the same parties or their  
9 privies. And the term "privy" means as unity of  
10 interest, and certainly that would apply between the  
11 County and the County's codes enforcement officer.

12 So we have the same parties here. We  
13 have an action here that could have been litigated in  
14 the first case and, in fact, in this instance was  
15 litigated in the first case. The very first thing that  
16 happened in the first case was we came in and had an  
17 eight-day trial on whether or not there should be an  
18 injunction to stop the construction.

19 So we've already been down this road.  
20 The Court has heard proof on these issues of whether or  
21 not there's some type of irreparable harm and so forth.  
22 And we -- the defendants are not obligated under law to  
23 defend the same action twice. This lawsuit is  
24 res judicata, and the requested relief now certainly is  
25 not appropriate.

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1 We also contend that the mandamus  
2 remedy that's being requested is not an available  
3 remedy. As a general rule, mandamus is not a favored  
4 remedy against a governmental entity anyway. And where  
5 it can be utilized against a governmental entity, the  
6 circumstances are narrow and rare. And as the  
7 plaintiff, I think, has correctly pointed out, there is  
8 some law to suggest where it's nothing more than a  
9 ministerial act, perhaps mandamus can issue. But I  
10 would submit to the Court that is not the case here.

11 Case law says in order to determine  
12 that it's ministerial and for mandamus to apply, the  
13 plaintiff has to have a clear claim and right to the  
14 relief sought, number one; and, number two, that the  
15 defendant has a plainly defined duty to do the act in  
16 question. Respectfully, neither of those things exist  
17 here.

18 The plaintiffs' right to relief  
19 requested is predicated exclusively on the Court's  
20 prior order. And not restating the prior order, we're  
21 not in a position right now, before the expiration of  
22 30 days, to enforce that order. And so there is no  
23 clear right for the plaintiff to enforce anything or to  
24 require any particular act.

25 Second, the defendant doesn't have a

5 (Pages 14 to 17)



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1 plainly defined duty in this instance. That would mean  
2 that the obligation is so clear that there's no  
3 discretion involved in the action being requested. And  
4 clearly there is.

5 There's not been any evidence that in  
6 every circumstance where there's a question about a  
7 building permit that the codes director just goes and  
8 issues a stop-work order or that he pulls a permit.  
9 There may be a number of actions that he may take in  
10 advance of that. He makes decisions about how to  
11 proceed based on any particular circumstance, and those  
12 are discretionary acts.

13 And where there's discretion about  
14 which steps to take, the Court is not to step in and  
15 order any particular action, respectfully. The law  
16 doesn't support that where there is discretionary act  
17 in question. And here, there is.

18 As a final matter, the plaintiff  
19 suggests there's no other remedy. I'll submit to you  
20 that there is another remedy, and that is this.  
21 They've relied -- in their effort to try to suggest  
22 they're not trying to enforce the Court order but are  
23 relying somehow on a statute, they've cited this TCA  
24 13-7-111. Two things are noteworthy about the statute.

25 The first thing is there's no

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1 obligation under that statute for anybody to take any  
2 particular action, even where there's construction that  
3 may be arguably in violation of a zoning resolution.  
4 If you read on down into the statute, it is simply a  
5 grant of authority, or a right, if you will.

6 And it says "may." These various  
7 parties may take action to enforce it. And under the  
8 statute, it's not only the County or the legislative  
9 body that can take action. It specifically says the  
10 Attorney General, the District Attorney, and it says an  
11 adjacent property owner can take the action. But it's  
12 not against the County. It's against the party who's  
13 alleged to be in violation.

14 Which brings us to, yet again, a point  
15 that's been raised a number of times. That is the  
16 ICM -- again, it's not a party to this litigation.  
17 Respectfully, under Rule 19, that requires joinder of  
18 certain parties, it is not possible for the plaintiffs  
19 to get the relief that they're seeking without all of  
20 the parties who will be affected present in the case.  
21 That's what's happening here. They continue to pursue  
22 the County, and the County is sort of incidentally  
23 involved at this point, based on the relief they're  
24 seeking.

25 And, clearly, the statute that they

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1 rely upon does not -- it does provide other avenues for  
2 the plaintiffs outside the one they're pursuing. And  
3 as a result of that, mandamus cannot lie, because the  
4 elements for a mandamus order are not met.

5 They ask for injunctive relief in the  
6 alternative of mandamus. Again, respectfully, we've  
7 been down that road once already. Clearly here, the  
8 plaintiffs -- there is no threat. They have not showed  
9 and they cannot show a threat of irreparable harm.

10 The only information submitted to the  
11 Court that has anything do with irreparable harm is one  
12 sentence, the last paragraph on one of the two  
13 affidavits submitted with the complaint. It simply  
14 says, I'll suffer irreparable harm. But that,  
15 obviously, is a conclusory statement. It's not  
16 evidence, per se. It's just a conclusion. I'm going  
17 to suffer irreparable harm. There's no showing of  
18 irreparable harm in this instance.

19 Moreover, any injury, I would assume,  
20 that is argued to have occurred or is occurring, has  
21 already occurred. This building is substantially  
22 complete. We've already asked for an injunction two  
23 years ago that was denied. Now the building is  
24 substantially complete.

25 If the plaintiffs believe that they

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1 are injured or irreparably injured, that injury,  
2 presumably, has occurred to this point. There's no  
3 new, ongoing injury to occur. Certainly, none has been  
4 shown by the pleadings.

5 The Court, also in considering  
6 injunctive relief, has to balance the harm between the  
7 plaintiff and the defendant. And, certainly, while the  
8 plaintiffs have no irreparable injury here and haven't  
9 shown any, the defendants do have the possibility of  
10 being harmed by entry of an order.

11 Again, we have the threat, or at least  
12 the possible threat, of being in violation of federal  
13 and state religious acts. We also have another party  
14 out there who's affected by the action taken, if the  
15 plaintiffs succeed here, that aren't parties to this  
16 case. That subjects the defendants to potential harm  
17 in the form of other forms of legal action and so  
18 forth.

19 So in just weighing the equities of  
20 injunctive relief, on the one hand, the plaintiffs  
21 aren't suffering ongoing irreparable harm, and the  
22 defendants may suffer harm as a result of an order that  
23 could be entered.

24 So with that, I will restate, Your  
25 Honor, obviously the defendants will do whatever this

6 (Pages 18 to 21)

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1 Court orders. We're here to comply with those court  
2 orders. The idea that somehow the defendants are  
3 trying to snub their nose at the Court and so forth is  
4 simply incorrect.

5 Just as a practical matter, there has  
6 to be a time period for the parties to decide what  
7 action they want to take in response to a final order.  
8 And the law sets that out. And efforts to enforce the  
9 order at this stage are premature. They can be  
10 addressed at an appropriate time, depending on what  
11 actions are taken by the parties in response to the  
12 Court's order.

13 THE COURT: Thank you, sir.

14 Mr. Brandon?

15 MR. BRANDON: Just briefly, Judge.  
16 He -- it's kind of the tale of the tale about the last  
17 six sentences from his last sentence. He said, We have  
18 the threat of violating RFRA from the folks out there  
19 building. That is Shariah law. Their law trumps our  
20 laws.

21 Stated another way, Chancellor, don't  
22 make us do what we're obligated to do, because the  
23 folks at the ICM are threatening us.

24 We're asking this Court to follow the  
25 law, make the Government follow the law, and grant us

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1 the relief we're seeking.

2 THE COURT: Thank you.

3 MR. MCCREARY: Your Honor, can I  
4 briefly -- I need to briefly respond to that briefly.  
5 I did not say we had been threatened. I said there is  
6 a threat. That is a legal threat. There are laws out  
7 there that apply in this situation.

8 THE COURT: Very well.

9 Mr. Brandon, anything further?

10 MR. BRANDON: No, sir.

11 THE COURT: Counsel, let me appreciate  
12 the excellence of your presentations in this matter as  
13 well.

14 I will recognize, and I think counsel  
15 recognized, the issue with which the Court dealt in the  
16 former case. The issue really, in our second phase, I  
17 guess, of the former trial, the former hearing, really  
18 dealt only tangentially, I'll suggest to you, with the  
19 issue of the construction that was ongoing and so  
20 forth. The issue, frankly, was the duty of the  
21 Government, then, to make substantial efforts, then --  
22 or make some efforts to notify members of the public as  
23 to what the issues were that were going to be  
24 determined.

25 We live in a time, I think, where

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1 transparency in government is probably becoming a buzz  
2 word. And I won't go over the facts that were  
3 presented in the former case. The Court found  
4 substantial concerns, setting aside the newspaper  
5 publication for a moment, the issues dealing with the  
6 website and the proof that was presented there that  
7 the -- while the advertisement in the paper suggested  
8 that it was a meeting scheduled -- regular meeting  
9 subject to change, and the proof then showed that the  
10 website regularly and routinely showed the meetings and  
11 generally the agenda. The proof here was the date,  
12 even, of this meeting didn't come up on the website  
13 before the meeting was held.

14 There were other facts that I won't  
15 deal with in detail. We determined not that the  
16 construction was improper or any of those other  
17 factors, we simply determined that, in fact, the  
18 meeting was not conducted in accordance with the  
19 Tennessee Open Meetings Law. For substantial facts and  
20 substantial reasons, I'll suggest to you that any other  
21 decision in that regard takes a gigantic leap backward  
22 in the duty of governments to be open and to allow  
23 citizens to be informed as to the workings of their  
24 government. That really is all we dealt with.

25 The Tennessee law says that when the

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1 meetings are not properly open, that any action that is  
2 taken at that meeting is void. Our decision, of  
3 course, dealt only with this one particular issue.  
4 And, of course, again, we had to consider those facts  
5 concerning the totality of the circumstances, which in  
6 this case had to include the fact that this was a  
7 matter which -- a matter in which the citizens had  
8 tremendous interest.

9 Now, that having been the case, we did  
10 enter our opinion. And as both counsel have  
11 acknowledged, there was a difference of opinion as to  
12 what properly should be contained within the order.  
13 And maybe it was more stylistic than substantive.  
14 Although, I'll suggest, perhaps, there were some  
15 substantive differences in the order.

16 The Court considered both positions  
17 for both counsel and recognizes, again, the -- again,  
18 further the responsibility that counsel of both sides  
19 showed. The first draft -- submitted draft of the  
20 order submitted by the plaintiff was almost immediately  
21 after the entry of the opinion. And although defense  
22 has, under our rules, five days to respond, I think  
23 defense responded, I think, almost immediately. And  
24 the Court then, upon consideration of both of those  
25 orders, entered, as you folks have suggested, our own

7 (Pages 22 to 25)



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1 order. That was entered on, of course, June 1st. The  
2 sides -- both sides differ as to the enforcement of the  
3 court order, the time frame of when that order should  
4 be enforced.

5 I do recognize that there are some  
6 orders that must be enforced immediately. For example,  
7 orders dealing with criminal contempt, dealing with the  
8 duty of the Court to maintain the peace and dignity in  
9 the judicial proceedings, those must be enforced  
10 immediately upon the oral statement of the Court. And  
11 to find otherwise would, in fact, not allow court  
12 proceedings to proceed in an orderly manner.

13 There are other orders, of course,  
14 involving particularly civil money judgments, I'll  
15 suggest, that are generally issued by our Circuit  
16 Courts. Those, almost without exception, are entered  
17 and do not become final until 30 days have elapsed.  
18 And there's new opportunity to execute on those  
19 judgments until the lapse of 30 days, again, absent  
20 unusual circumstances.

21 And an equity court, of course, can  
22 issue an attachment, then, as to the funds, if unusual  
23 circumstances are shown. And that can occur in less  
24 than 30 days after the judgment and, as a practical  
25 matter, prior to the judgment being issued in some

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1 cases.

2 The issue here, then, is whether there  
3 is a circumstance, respectfully, that's -- that's so  
4 pervasive we should enter the order in less than the  
5 30-day time period. The defense suggests that perhaps  
6 we, in essence, are without jurisdiction to enter such  
7 an order. I would remind all counsel, of course, this  
8 is a court of equity.

9 On the other hand, I would question,  
10 respectfully, whether there is the manifest  
11 circumstance or need for the unusual step; admittedly,  
12 that it is unusual to enter an order enforcing the  
13 judgment in a time period less than 30 days.  
14 Respectfully, I don't think I can find that.

15 We'll deal with the injunction issue  
16 in just a moment. Injunctive relief, obviously, is  
17 different and comes under a different rule of  
18 procedure.

19 So I would suggest to you,  
20 respectfully, we obviously will be here and available  
21 the first week in July. The 30th judicial day, I  
22 suppose, after June 1 is going to be Monday, July 2nd,  
23 because of the rules concerning judicial days and when  
24 the 30th day falls on a weekend. We'll be here the  
25 first week in July if hearings are requested or set at

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1 that point in time.

2 The issue -- I suppose I should  
3 address just briefly the defense's assertion that, in  
4 fact, there would be potential violation of the federal  
5 and state Religious Freedom and Restoration Acts. And  
6 the reading or wording of those acts in elementary, I  
7 guess, and summary form essentially says that all of  
8 these applications should be treated in a like manner.  
9 And I would suggest to you that that means where site  
10 plans are required, site plans must be approved at a  
11 proper and appropriately advertised or noticed meeting,  
12 which, obviously, is an issue here.

13 The County also suggests to us that  
14 these issues are res judicata. We understand the  
15 County's argument to be because these matters were  
16 presented on preliminary injunction or request for  
17 preliminary injunction, the Court can't consider them  
18 further and that those are closed and concluded. And,  
19 respectfully, I don't understand that to be the law  
20 when the Court makes preliminary rulings concerning  
21 injunctive relief.

22 Obviously, if we grant the injunctive  
23 relief, we subsequently can enter an order which  
24 affirms that preliminary ruling or which reverses it.  
25 And, likewise, just because we find that the stringent

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1 requirements for injunctive relief are not met doesn't  
2 prevent us to from ultimately making a determination at  
3 the conclusion that relief is appropriate to the  
4 contrary.

5 Whether mandamus action will lie, I  
6 recognize both counsel are arguing in opposite  
7 fashions. No one has suggested whether or not the  
8 petition, as it affects the County, should be brought  
9 or initiated or be joined in with the State Attorney  
10 General. I raise that only because I trust that  
11 between now and a subsequent hearing, if that is later  
12 scheduled after the running of the 30 days, that that's  
13 something counsel may want to address. And to the  
14 extent we are able, it would certainly be our hope  
15 that, to the extent we can, we deal with merits and not  
16 technicalities. But, obviously, it's our duty to  
17 enforce the law, even if it may be considered technical  
18 in some fashions.

19 The issue, then, that further remains  
20 is that concerning the injunctive relief. We  
21 recognize, obviously, that any decision that we make is  
22 certainly subject to appeal. I suppose any Court,  
23 other than United States Supreme Court, is subject to  
24 having their decisions reviewed, and rightfully so.

25 We recognize that the decision we make

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1 is subject to review by the intermediate Court of  
2 Appeals, which certainly has jurisdiction superior to  
3 ours and by whose decisions we are governed. And,  
4 similarly, that Court, obviously, is subject to the  
5 decisions of our State Supreme Court.

6 And where the appropriate findings are  
7 made, even our State Supreme Court are subject to the  
8 decisions of the United States Supreme Court in such  
9 actions where that Court chooses to accept the  
10 opportunity, then, to deal with those cases. So we  
11 recognize that there always is the opportunity for  
12 appeal.

13 And at this point, obviously, appeal  
14 is certainly -- it's not discretionary with the  
15 Appellate Court, it's at the subsequent levels.  
16 Whether the Court hears those cases may be  
17 discretionary. It's not from the Trial Court to the  
18 Appellate Court.

19 Nonetheless, we recognize again that  
20 absent some further ruling, parties are bound by the  
21 decisions of the Trial Court unless and until those  
22 decisions are stayed or reversed, either through the  
23 action of the Appellate Court or through some further  
24 action of the Trial Court. But absent that ruling, we  
25 contemplate, of course, that the decisions we make, of

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1 course, will become enforceable, then, after the 30-day  
2 time period.

3 I would hasten to suggest, as I have  
4 done repeatedly in this case, that there is,  
5 respectfully nothing in our ruling which in any way  
6 prevents the defendants from properly noticing and  
7 properly holding a further meeting and considering  
8 these very same issues which were raised previously.  
9 In fact, it may be considered, perhaps, that the group  
10 of citizens -- which you folks have referenced as the  
11 "ICM" -- but the group of citizens had a petition -- or  
12 not a petition, but a request, whatever it may be  
13 properly termed, before the defendant for approval of a  
14 site plan at an appropriately noticed meeting.

15 As we contemplate, that still hasn't  
16 occurred. There's nothing in our ruling, nothing in  
17 our decision that prevents the defendant from holding  
18 that meeting under conditions which are appropriate and  
19 in accordance with our memorandum of opinion and our  
20 order. And, respectfully, whatever decision is made at  
21 that point by that defendant body may, in fact,  
22 significantly affect the decisions that we have before  
23 us. There's nothing that we have ruled that would  
24 prevent that subsequent meeting from being held.

25 I will suggest that at this point,

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1 considering the ruling that we have made, if, in fact,  
2 the plaintiffs are seeking the order of the Court,  
3 under Rule 65, to order that the County not issue  
4 further process -- whatever those orders may be  
5 called -- further process regarding the construction of  
6 this facility, in light of the ruling that we have  
7 made, that it would appear that the probability of the  
8 success on the merits as to that issue is pretty  
9 substantial.

10 The County Planning Resolution has  
11 been introduced to us previously. We've considered  
12 those terms. And, perhaps, there's no dispute that in  
13 this case there has to be an approved site plan before  
14 there can be an occupancy permit -- if that's the term  
15 the County uses -- that would be issued. So I think  
16 the plaintiffs, then, would be entitled to that  
17 injunctive relief at this point in time.

18 The provisions of Rule 65 always  
19 require that a bond be required anytime an injunction  
20 is issued, unless, of course, there was some means or  
21 some circumstance where the Court should waive that  
22 bond. I don't see that before us here. And unless  
23 there are further issues that the Court should  
24 consider, it appears proper to us to require  
25 25,000-dollar bond for the issuance of that injunction.

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1 I believe that fairly deals with the  
2 issues that both sides have raised. I suppose it's  
3 appropriate that we follow the same procedure that we  
4 have followed previously.

5 Mr. Brandon, we'll impose on you to  
6 draw the first draft of the order from today's  
7 proceeding.

8 Mr. McCreary, contemplating that  
9 perhaps there may be a difference of thought as to the  
10 wording in that order, we certainly would welcome the  
11 objection to that order and competing order. And the  
12 Court, then, will either enter one of the orders or  
13 will, in fact, draw our own order as we've done in the  
14 past.

15 Further matters?

16 MR. MCCREARY: Yes, sir. You said the  
17 defendant is enjoined from further process. I don't  
18 know --

19 THE COURT: Specifically dealing with  
20 the occupancy permit, if that's the term you use.

21 MR. MCCREARY: Okay. Is it limited to  
22 that? It can't issue a certificate of occupancy?

23 THE COURT: Yes, sir.

24 MR. MCCREARY: Okay. Right. And  
25 that's the limitation. I'm asking because I presume,

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1 for example, if you have a building permit, someone  
 2 goes and inspects the building periodically. Does that  
 3 mean you can't do that? Does that mean -- I don't know  
 4 what "processes" are. So if we're limiting it to the  
 5 certificate of occupancy, I understand that.

6 THE COURT: That's the limitation of  
 7 our injunction. We contemplate that the County, of  
 8 course, as a law-abiding citizen, is going to recognize  
 9 the needs regarding construction that's ongoing in the  
 10 absence of a site plan. That's something that's going  
 11 to address itself, I think, at this point, at least, to  
 12 the County and to the decisions that they make.

13 MR. MCCREARY: Okay.

14 THE COURT: Further matters,  
 15 Mr. Brandon?

16 MR. BRANDON: No, sir.

17 THE COURT: Thank you, folks.  
 18 (Proceedings concluded at  
 19 11:11 a.m.)  
 20  
 21  
 22  
 23  
 24  
 25

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1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE }

3 COUNTY OF WILSON }

4 I, George Ryan Bertram, Licensed Court  
 5 Reporter, and Notary Public for the State of Tennessee,  
 6 with offices in Mt. Juliet, Tennessee, hereby certify  
 7 that I reported the foregoing proceedings at the time  
 8 and place set forth in the caption thereof; that the  
 9 proceedings were stenographically reported by me; and  
 10 that the foregoing proceedings constitute a true and  
 11 correct transcript of said proceedings to the best of  
 12 my ability.

13 I FURTHER CERTIFY that I am not  
 14 related to any of the parties named herein, nor their  
 15 counsel, and have no interest, financial or otherwise,  
 16 in the outcome or events of this action.

17 IN WITNESS THEREOF, I have hereunto  
 18 affixed my official signature and seal of office this  
 19 2nd day of July, 2012.  
 20

21  
 22 \_\_\_\_\_  
 23 GEORGE RYAN BERTRAM, LCR #391  
 24 Court Reporter and Notary  
 25 Public in and for the State  
 of Tennessee

My Commission Expires:  
 January 26, 2014

10 (Pages 34 to 35)